IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

FAO No.121 of 1992

Date of Decision: 28.2.2007

Paramjit Kaur and others

Appellants

versus

Harbans Lal and another

Respondents

CORAM:- **HON'BLE MR. JUSTICE JASBIR SINGH**

Present: Shri M.S.Rakkar, Sr.Advocate with
Shri Pritam Singh Baath, Advocate for the appellants
Shri K.S.Sidhu, Advocate for the respondents

Jasbir Singh, J. (Oral)

This order will dispose of FAO Nos.121 and 644 of 1992. For the purpose of dictating this order, facts are being mentioned from FAO No.121 of 1992.

This appeal has been filed by the claimants against award dated 18.11.1999, passed by the Motor Accident Claims Tribunal, Patiala (in short, the Tribunal), vide which, an amount of Rs.1,34,400/- was awarded to them towards compensation, on account of death of Jagwant Singh alias Jagdev Singh, who died in a motor accident on 12.3.1989.

The second appeal bearing FAO No.644 of 1992 has been filed by the owner of the offending vehicle i.e. truck bearing No.PBD-9145, with a prayer that the judgment passed by the Tribunal below, be set aside, as negligence, on part of driver of the vehicle, in causing the accident, was not proved on record.

As per averments of the claimants, deceased Jagwant Singh, alongwith one Kartar Singh, was going towards village Sher Majra on his scooter. They were followed by Pritam Singh, brother-in-law of the deceased, on another scooter. When they reached near village Fatehpur, the offending vehicle, which was being driven in a rash and negligent manner, came from Patiala side and hit the scooter, being driven by the deceased. As a result of which, deceased and Kartar Singh fell down on the ground, dragged by the truck and received multiple injuries. Jagdev Singh died at the spot.

In claim application, before the Tribunal, it was case of the appellants that the deceased was an agriculturist and was earning an amount of Rs.15,000/- to Rs.20,000/- per month. In reply, factum of accident was admitted. However, it was denied that the same has been caused on account negligence of the driver of the truck. Rather, it was said that the deceased was in a drunken condition, the accident was caused when due to high speed of the scooter, it slipped and the deceased received injuries in that process. It was further stated that the truck was parked near the place of accident, one day prior thereto. The Tribunal gave opportunity to both the parties to adduce their evidence and after examining the same, regarding factum of accident, it was observed thus:-

> *"9.Laxi Narain RW.1 has totally denied the accident stating that he did not drive the truck No.PBD-9145 and did not cause any accident by driving the same and that on 11.3.89 the above said truck was coming towards Samana from the side of Patiala and Bawa Singh was the driver of the said truck and Satnam Singh was the cleaner. He further stated that the tio-rod steering of the truck developed problems as its Goli was*

broken and the truck was not in a condition to move on the road and that on 12.3.89 Satnam Singh came to them at Patran and informed about the problem of the truck and then he sent Chajju Singh Mechanic from Patiala for repair of the truck and that Chajju Singh came back at about 1 PM and told him tha the Goli which had broken was of bigger size. He further stated that then one person was sent to Patiala for bringing that goli and then the defect in the truck was removed at about 4 PM.

10.The statement of Laxmi Narain RW.1 is not believable because it is a matter of common knowledge that the drivers generally do not admit their negligence and they shift the negligence on the other side. Admittedly, in this case FIR was registered against the driver of the truck which is Ex.AW1/A on the record in which the number of the vehicle is mentioned and moreover the driver Laxmi Narain as RW.1 has admitted that a criminal case under S.304-A IPC is pending against him and he is facing and all these circumstances show that the offending vehicle was involved in the accident.

11.Secondly, the driver has took the plea that the truck was out of order on the day of accident due to the breakage of toi-rod, which is not believable because if the truck was out of order due to the breakage of toi-rod they must have gone to the Mechanic nearby which is not supposed to be known to them as there is no cogent evidence on the record to show. The statement of Chajju Singh RW.2 that he had gone to repair the truck on 12.3.89 has not been corroborated by any cogent

evidence such as the receipt of the repair charges, or the bill book etc. So any person can come and depose that he had repaired the truck on such and such date which was most crucial date and has not been produced and the probability seems to be otherwise that the truck had went out of order due to breakage of the nut of toi-rod on the date of accident and the accident took place because of that.

12.The testimony of AW.1 Pritam Singh thus is of much credibility and further his testimony coupled with the copy of the FIR Ex.AW.1/A in which the name of the driver as well as number of the truck is mentioned, goes to prove that the accident had taken place due to rash and negligent driving of truck No.PBD-9145 by its driver and the issue is, therefore, decided accordingly in favour of the claimants."

This Court feels that the finding given above, is perfectly justified. It is not in dispute that regarding accident, in question, FIR was registered against driver of the truck, which has been brought on record as Ex.AW1/A. Owner and driver of the truck have failed to prove on record that the truck was parked at the spot one day earlier to the date of accident, on account of some mechanical defect, as alleged. In view of finding of fact given above, no case is made out for interference in above finding given by the Tribunal.

So far as quantum of compensation is concerned, it has come on record that the deceased owned about 48 acres of land. It was case of the claimants that on account of his death, agricultural income has decreased. However, by taking note of testimony of appellant No.1, the Tribunal has ignored that claim. In her statement, it has been admitted by the appellant

No.1 that she had sold crop of wheat for about Rs.99,000/-. If amount of rice crop is also added to the same, it will be quite apparent that virtually no loss has been caused, so far as agricultural income is concerned.

The Tribunal has assessed only Rs.700/- per month, by stating that this much loss might have been caused to the claimants, on account of lack of supervision, to the agricultural work, being rendered by the deceased. This Court feels that to that extent, finding given is not justified. It has come on record that besides supervising the agricultural work, the deceased was also driving tractor at times and on account of that, the claimants were entitled to claim loss equal to the amount of salary, being paid to a tractor driver at that time, which can safely be assessed at Rs.1200/- per month. So far as sale of milk is concerned, no doubt, it appears that an attempt has been made to exaggerate the claim in that regard, however, keeping in view evidence of appellant No.1, Labh Singh AW3 and Shinder Singh AW4, it can be said that the deceased might be selling milk and earning not less Rs.400/- per month. In this manner, the loss cause to the appellants would come to Rs.1600/- per month. Age of the deceased was 36 years. Contention of counsel for the respondents that the multiplier is on the higher side, appears to be justified. In view of ratio of judgment of Hon'ble the Supreme Court in *The New India Assurance Company Limited v. Smt.Kalpana and others*, JT 2007(2) SC 353, multiplier of 13 will be adequate in the present case. Now, after re-calculation, the amount of compensation, would come to Rs.2,49,600/-. By adding funeral expenses, it can be rounded upto Rs.2,50,000/-. The appellants shall be entitled to claim interest, on the enhanced amount, @ 9% per annum(simple) from the date of moving their application to claim compensation, till realisation of the amount. 3/4th of the amount of

enhanced compensation, alongwith interest, be paid to appellant No.1 and remaining 1/4th amount, alongwith interest, be paid to Gurdev Kaur, mother of the deceased.

With above mentioned modification, appeal filed by the claimants bearing FAO No.121 of 1992 stands allowed and the appeal filed by the owner bearing FAO No.644 of 1992 stands dismissed.

February 28, 2007 **(Jasbir Singh)**
gk **Judge**